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10/663,444	09/16/2003	Steven E. Koenck	35740XYCD	1592

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EXAMINER

LE, THIEN MINH

ART UNIT PAPER NUMBER

2876

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/663,444

**Applicant(s)**

KOENCK, STEVEN E.

**Examiner**

Thien M. Le

**Art Unit**

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No.

6,681,994 (herein after referred as the '994 patent). Although the conflicting claims are not identical, they are not patentably distinct from each other because the essentially recited the same limitations.

Claim 1 is rejected in view of claims 1 & 2 of the '994 patent. Similar to the claimed invention, claim 1 of the '994 patent recites:

1. A method of optically reading information occupying an information area and wherein information content may be represented by varying optical reflectivity along respective orthogonal axes of the information area, said method comprising the steps of:

(a) positioning a user-supported optical reader containing a photosensor which reads along row and column pixel axes, so that the optical reader is within a range of distances from the information area, and so that the orthogonal axes of the

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information area occupy a range of angular relationships to the pixel axes along which the photosensor reads;

(b) marking the information area with at least one beam of light;

(c) imaging, for said range of distances and said range of angular relationships, the information area onto the photosensor so that the information content of the information area is imaged onto the photosensor without requiring prior angular movement of the user-supported optical reader; and

(d) generating a digital representation of the information content imaged from the information area onto the photosensor for any position of the information area relative to the user-supported optical reader within said range of distances and for any angular relationship between said orthogonal axes of the information area and the pixel axes along which the photosensor images.

2. The method of claim 1, further comprising the step of focussing the user-supported optical reader automatically on the information area.

In additional to the limitations recited above in claims 1 & 2 of the '994 patent, it is noted that the step of marking the information area is considered as the step of "focusing the user-supported optical reader". As can be seen, the patent protections have been granted to the earlier filed application.

Similarly, claim 2 is rejected in view of claim 3 of the '994 patent in that claim 3 of the patent recites:

3. The method of claim 1, further comprising the step of aiming the user-supported optical indicia reader by holding it with a hand.

Similarly, claim 3 is rejected in view of claim 4 of the '994 patent in that claim 3 of the patent recites:

4. The method of claim 1, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code located within the information area.

Similarly, claim 4 is rejected in view of claim 5 of the '994 patent in that claim 5 of the patent recites:

5. The method of claim 1, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a human-readable character located within the information area.

Similarly, claims 5-16 are rejected in view of claims 6-48 of the '994 patent in that the remaining claims of the patent recite:

6. The method of claim 1, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code or a human-readable character located within the information area.

7. The method of claim 6, wherein said generating step further comprises a recognizing step to determine whether the information content is being conveyed via a bar code or via a human-readable character.

8. The method of claim 1, wherein said imaging step further comprises the step of illuminating the entire information area instantaneously with a flash of light.

9. The method of claim 1, wherein said range of angular relationships exceeds the angular range defined by diagonals of the information area to be read.

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10. A method of optically reading information occupying an information area and wherein information content may be represented by varying optical reflectivity along respective orthogonal axes of the information area, said method comprising the steps of: (a) positioning a user-supported optical reader containing a photosensor that reads along row and column pixel axes so that the orthogonal axes of the information area occupy a range of angular relationships to the pixel axes along which the photosensor reads; (b) automatically focussing the user-supported optical reader on the information area; (c) marking the information area with at least one beam of light; (d) imaging, for said range of angular relationships, the information area onto the photosensor so that the information content of the information area is imaged onto the photosensor without requiring prior angular movement of the user-supported optical reader; and (e) generating a digital representation of the information content imaged from the information area onto the photosensor for any angular relationship between said orthogonal axes of the information area and the pixel axes along which the photosensor images.

11. The method of claim 10, further comprising the step of aiming the user-supported optical indicia reader by holding it with a hand.

12. The method of claim 10, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code located within the information area.

13. The method of claim 10, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a human-readable character located within the information area.

14. The method of claim 10, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code or a human-readable character located within the information area.

15. The method of claim 14, wherein said generating step further comprises a recognizing step to determine whether the information content is being conveyed via a bar code or via a human-readable character.

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16. The method of claim 10, wherein said imaging step further comprises the step of illuminating the entire information area instantaneously with a flash of light.

17. The method of claim 10, wherein said range of angular relationships exceeds the angular range defined by diagonals of the information area to be read.

18. A method of optically reading information occupying an information area and wherein information content may be represented by varying optical reflectivity along respective orthogonal axes of the information area, said method comprising the steps of: (a) positioning a user-supported optical reader containing a photosensor which reads along row and column pixel axes, so that the optical reader is within a range of distances from the information area, and so that the orthogonal axes of the information area occupy a range of angular relationships to the pixel axes along which the photosensor reads; (b) automatically focussing the user-supported optical reader on the information area; (c) imaging, for said range of distances and said range of angular relationships, the information area onto the photosensor so that the information content of the information area is imaged onto the photosensor without requiring prior angular movement of the user-supported optical reader; and (d) generating a digital representation of the information content imaged from the information area onto the photosensor for any position of the information area relative to the user-supported optical reader within said range of distances and for any angular relationship between said orthogonal axes of the information area and the pixel axes along which the photosensor images.

19. The method of claim 18, further comprising the step of aiming the user-supported optical indicia reader by holding it with a hand.

20. The method of claim 18, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code located within the information area.

21. The method of claim 18, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a human-readable character located within the information area.

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22. The method of claim 18, wherein said generating step can generate a digital representation of the information content when the information content is conveyed via a bar code or a human-readable character located within the information area.

23. The method of claim 22, wherein said generating step further comprises a recognizing step to determine whether the information content is being conveyed via a bar code or via a human-readable character.

24. The method of claim 18, wherein said imaging step further comprises the step of illuminating the entire information area instantaneously with a flash of light.

25. The method of claim 18, wherein said range of angular relationships exceeds the angular range defined by diagonals of the information area to be read.

26. The method of claim 18, further comprising a calibrating step to identify faults in the photosensor.

27. A user-supported optical indicia reader, comprising: (a) a photosensor area array, located in the user-supported optical indicia reader, positioned to capture an image of an imaging area located externally of the user-supported optical indicia reader, said photosensor area array outputting a signal descriptive of the imaging area; (b) a marker generating component, located in said user-supported optical indicia reader, to generate at least one beam of light energy to mark the imaging area; and (c) a reading system having an input accepting the signal output by said photosensor area array, said reading system further having an analysis system capable of converting the inputted signal into a decoded signal representative of information contained within an imaged optical indicia; the reading system being capable of generating a decoded signal regardless of the orientation of the optical indicia relative to said photosensor area array.

28. The user-supported optical indicia reader of claim 27, further comprising an autofocus component.

29. The user-supported optical indicia reader of claim 27, further comprising a housing accomodating hand-held usage of the user-supported optical indicia reader.

30. The user-supported optical indicia reader of claim 27, wherein said reading system can generate a decoded signal when an optical indicia is a bar code.



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31. The user-supported optical indicia reader of claim 27, wherein said reading system can generate a decoded signal when an optical indicia is a human-readable character.

32. The user-supported optical indicia reader of claim 27, wherein said reading system can generate a decoded signal when an optical indicia is a bar code or a human-readable character.

33. The user-supported optical indicia reader of claim 32, wherein said reading system comprises a recognition system to determine whether the optical indicia is a bar code or a human-readable character.

34. The user-supported optical indicia reader of claim 27, further comprising an instantaneous illumination component.

35. A user-supported optical indicia reader, comprising: (a) a photosensor area array, located in the user-supported optical indicia reader, positioned to capture an image of an imaging area located externally of the user-supported optical indicia reader, said photosensor area array outputting a signal descriptive of the imaging area; (b) an autofocus system, located in said user-supported optical indicia reader, to automatically focus the imaging area onto said photosensor area array; and (c) a reading system having an input accepting the signal output by said photosensor area array, said reading system further having an analysis system capable of converting the inputted signal into a decoded signal representative of information contained within an imaged optical indicia; the reading system being capable of generating a decoded signal regardless of the orientation of the optical indicia relative to said photosensor area array.

36. The user-supported optical indicia reader of claim 35, further comprising a housing accomodating hand-held usage of the user-supported optical indicia reader.

37. The user-supported optical indicia reader of claim 35, wherein said reading system can generate a decoded signal when an optical indicia is a bar code.

38. The user-supported optical indicia reader of claim 35, wherein said reading system can generate a decoded signal when an optical indicia is a human-readable character.

39. The user-supported optical indicia reader of claim 35, wherein said reading system can generate a decoded signal when an optical indicia is a bar code or a human-readable character.

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40. The user-supported optical indicia reader of claim 39, wherein said reading system comprises a recognition system to determine whether the optical indicia is a bar code or a human-readable character.

41. The user-supported optical indicia reader of claim 35, further comprising an instantaneous illumination component.

42. A user-supported optical indicia reader, comprising: (a) a photosensor area array, located in the user-supported optical indicia reader, positioned to capture an image of an imaging area located externally of the user-supported optical indicia reader, said photosensor area array outputting a signal descriptive of the imaging area; (b) a marker generating component, located in said user-supported optical indicia reader, to generate at least one beam of light energy to mark the imaging area; (c) an autofocus system, located in said user-supported optical indicia reader, to automatically focus the imaging area onto said photosensor area array; and (d) a reading system having an input accepting the signal output by said photosensor area array, said reading system further having an analysis system capable of converting the inputted signal into a decoded signal representative of information contained within an imaged optical indicia; the reading system being capable of generating a decoded signal regardless of the orientation of the optical indicia relative to said photosensor area array.

43. The user-supported optical indicia reader of claim 42, further comprising a housing accomodating hand-held usage of the user-supported optical indicia reader.

44. The user-supported optical indicia reader of claim 42, wherein said reading system can generate a decoded signal when an optical indicia is a bar code.

45. The user-supported optical indicia reader of claim 42, wherein said reading system can generate a decoded signal when an optical indicia is a human-readable character.

46. The user-supported optical indicia reader of claim 42, wherein said reading system can generate a decoded signal when an optical indicia is a bar code or a human-readable character.

47. The user-supported optical indicia reader of claim 46, wherein said reading system comprises a recognition system to determine whether the optical indicia is a bar code or a human-readable character.

48. The user-supported optical indicia reader of claim 42, further comprising an instantaneous illumination component.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien M. Le whose telephone number is (571) 272-2396. The examiner can normally be reached on Monday - Friday from 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Le, Thien Minh  
Primary Examiner  
Art Unit 2876  
June 8, 2004**